



## **DEPARTMENT OF LABOR**

### **Occupational Safety and Health Administration**

#### **Establishing Indicators to Determine Whether State Plan Operations are At Least as Effective as Federal OSHA: Stakeholder Meeting**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor

**ACTION:** Notice of public meeting

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) invites interested parties to participate in an informal stakeholder meeting on establishing definitions and measures to determine whether OSHA-approved State Plans for occupational safety and health (State Plans) are at least as effective as the Federal OSHA program as required by the Occupational Safety and Health Act of 1970. The purpose of this meeting is to provide a forum to gather information and ideas on key outcome and activity based indicators and how OSHA can use such indicators to assess the effectiveness of State Plans.

**DATES:** The date for the stakeholder meeting is June 25, 2012, from 10 am to 1 pm eastern standard time, in Washington, DC. The deadline for registration to attend or participate in the meeting and to submit written comments is June 11, 2012.

**ADDRESSES:** The meeting will be held in the Francis Perkins Building, U.S. Department of Labor, Room N3437, at 200 Constitution Ave., NW, Washington, DC 20210. The nearest Metro station is Judiciary Square (Red Line). Photo ID is required to enter the building.

Registration to attend or participate in the meeting: To participate in the June 25, 2012 stakeholder meeting, provide written comments or be a nonparticipating observer, you must register electronically, by phone, or by facsimile by close of business on June 11, 2012. Those interested may register with Angela DeCanio by email at: [DeCanio.Angela@dol.gov](mailto:DeCanio.Angela@dol.gov), by phone at: (202) 693-2239, or by fax at: (202) 693-1671. Registrants should label their requests as: "Stakeholder Meeting: Monitoring of OSHA-Approved State Plans." When registering please indicate the following: 1) Name, address, phone, fax, and e-mail address; 2) Organization for which you work; and, 3) Organization you will represent (if different).

The meeting will last 3 hours, and be limited to approximately 20 participants. OSHA will do its best to accommodate all persons who wish to participate. OSHA encourages persons and groups having similar interests to consolidate their information and participate through a single representative. Members of the general public may observe, but not participate in, the meetings as space permits. OSHA staff will be present to take part in the discussions.

OSHA staff will manage registration of participants and observers and logistics for the meeting. A transcription of the meeting will be available for review at [www.osha.gov](http://www.osha.gov). OSHA will confirm participants to ensure a fair representation of interests and a wide range of viewpoints. Nonparticipating observers who do not register for the meeting will be accommodated as space permits. Electronic copies of this *Federal Register* notice, as well as news releases and other relevant documents, are available on the OSHA Web page at: [www.osha.gov](http://www.osha.gov). Registrants wanting to submit written comments must do so by June 11, 2012.

**FOR FURTHER INFORMATION CONTACT:** For general and press inquiries contact:

Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1725; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov). *For technical information contact:* Doug Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, Room N-3700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-2200; email: [kalinowski.doug@dol.gov](mailto:kalinowski.doug@dol.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Occupational Safety and Health Act of 1970 (“the Act”) created OSHA “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions....” The Act also encourages states to develop and operate their own workplace safety and health plans. Once OSHA approves a State Plan under Section 18(b) of the Act, OSHA may fund up to 50 percent of the state program’s operating costs. Absent an approved State Plan, states are preempted from enforcing occupational safety and health standards. As a condition of OSHA approval, State Plans must provide standards and enforcement programs that are “at least as effective as” the federal OSHA program, in addition to voluntary compliance activities, and cover public sector employees. OSHA is responsible for the approval and monitoring of State Plans.

Currently there are 27 OSHA-approved state occupational safety and health plans. Twenty-two states and territories operate comprehensive State Plans covering the private sector and state and local government employers and employees. Five states and territories operate

State Plans which cover only public sector employees. Additional information about state programs may be found at: <http://www.osha.gov/dcsp/osp/index.html>.

The Occupational Safety and Health State Plan Association (OSHSPA), the organization of officials from each of the OSHA-approved state plans, serves as the link from the states to federal agencies that have occupational safety and health jurisdiction and to Congress. The group holds three meetings a year with federal OSHA, giving State Plans the opportunity to address common issues and share information. OSHSPA representatives have appeared before congressional committees and other bodies to report on job safety and health issues.

Following congressional hearings over the past several years concerning state plan effectiveness, and an audit by the Department of Labor's Office of the Inspector General in March 2011, OSHA increased the level of onsite monitoring of state plans and committed to further strengthening communication between federal OSHA and the State Plans. On October 29, 2009, Deputy Assistant Secretary Jordan Barab testified before the House Committee on Education and Labor about the Special Study that OSHA conducted of the Nevada State Plan and OSHA's plans for increasing oversight and conducting a baseline special evaluation in all other State Plans.

In accordance with the Occupational Safety and Health Act of 1970, OSHA conducts an evaluation of the 27 approved State Plan States each fiscal year. Before FY 2009, the Federal Annual Monitoring and Evaluation (FAME) reports primarily assessed the State Plans' progress toward achieving the performance goals established by their strategic and annual performance plans as well as certain mandated activity measures tied to the federal OSHA program or requirements of the Act. OSHA and the State Plans have outcome based measures that are part of their strategic plans, including reducing fatalities and injuries/illnesses. Additional

information can be found at: <http://www.dol.gov/sec/stratplan/StrategicPlan.pdf> and <http://www.osha.gov/dcsp/osp/efame/index.html>.

In FY 2009 the FAME reports were enhanced to include baseline special evaluations for each State Plan. The Enhanced FAME reports assessed the State Plans' progress toward achieving the performance goals established by their FY 2009 Annual Performance Plans and reviewed the effectiveness of programmatic areas related to enforcement activities through onsite audits and case file reviews. Each State Plan formally responded to the Enhanced FAME report and, as appropriate, developed a Corrective Action Plan that was approved by OSHA. The 2009 interim monitoring guidance, intended to assist OSHA regions in monitoring state plans and preparing the FAME reports, focused on enforcement activities and the Corrective Action Plans in addition to performance goal. It was revised for the FY 2010 and FY 2011 evaluations in response to concerns and issues raised both within OSHA and from State Plans.

In response to the Office of the Inspector General (OIG) report entitled “OSHA Has Not Determined If State OSH Programs Are At Least As Effective in Improving Workplace Safety and Health as Federal OSHA’s Programs” (<http://www.oig.dol.gov/public/reports/oa/2011/02-11-201-10-105.pdf>), OSHA is working with OSHSPA to examine the monitoring system and address the OIG’s recommendation to OSHA “to define effectiveness, design measures to quantify impact, establish a baseline for State Plan evaluations, and revise monitoring to include an assessment of effectiveness.” The goal of the stakeholder meeting announced in this notice is to solicit ideas about how to define and measure effectiveness and to develop a revised monitoring system (in place of the interim guidance) to ensure consistency and effectiveness across the State Plans.

## **II. Stakeholder Meeting:**

The stakeholder meeting announced in this notice will be conducted in a manner that encourages participants to express individual views about how to determine whether OSHA-approved State Plans are as effective as the Federal OSHA program. Formal presentations by stakeholders are discouraged. The stakeholder meeting discussions will center on key indicators of effectiveness for Federal OSHA and OSHA-approved State Plans. The specific issues to be discussed will include the following:

1. OSHA's mission is “to assure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance.”
  - (a) How would you define or describe the components that constitute an OSHA-approved State Plan that was “effective” in achieving this mission (e.g., funding, staffing, standards setting, strong enforcement program, strong consultation program, frequency of inspection, strong training and outreach programs, level of penalties etc.)?
  - (b) What outcome based measures would you use to determine whether OSHA-approved State Plans were achieving this mission (e.g., reductions in injury and illness rates, reductions in fatality rates, etc.)?
  - (c) What activity based measures would you use to determine whether OSHA-approved State Plans were achieving this mission (e.g., number of inspections conducted, number of violations issued, etc.)?
2. Should there be a core set of effectiveness measures that both OSHA and State Plan programs must meet?

3. What activity and outcome based measures would you use to assess effectiveness as it relates to the reduction of health hazards?
  4. What activity and outcome based measures would you use to assess the effectiveness of the whistleblower program under Section 11(c) of the Act?
  5. What indicators would you use to determine and monitor whether OSHA-approved State Plans are “at least as effective” as federal OSHA as outlined in Section 18(b) of the Act?
- Representatives from the State Plans and OSHA have been working to develop a number of draft measures. OSHA will make these draft measures available on its website no less than two weeks before the stakeholder meeting.

#### **Authority and Signature**

This document was prepared under the direction of David Michaels, PhD, MPH,  
Assistant Secretary of Labor for Occupational Safety and Health.

Signed at Washington, DC, on May 23, 2012.

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**David Michaels,**  
*Assistant Secretary of Labor for Occupational Safety and Health.*

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